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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Murray Hooper,

Plaintiff,

v.

MARK BRNOVICH, Attorney General  
of Arizona; JERI WILLIAMS, Police  
Chief for the City of Phoenix,  
Defendants.

No.

**DEATH-PENALTY CASE**

**Expedited Ruling Requested**

**Complaint for Equitable Injunctive  
and Declaratory Relief [42 U.S.C. §  
1983]**

**I. Nature of Action**

1. This is an action for declaratory and injunctive relief under 42 U.S.C. § 1983. In 1982, Plaintiff Murray Hooper (“Plaintiff”), was sentenced to death in Maricopa County, Arizona. While a substantial amount of evidence is available for advanced forensic testing, DNA testing and other advanced forensic testing was previously

1 unavailable to Plaintiff because the trial took place in 1982.

2 2. Plaintiff has consistently maintained his innocence and has sought DNA and  
3 fingerprint testing of this evidence, but the State of Arizona has opposed this testing  
4 and the state courts have denied Plaintiff's motions.

5 3. Arizona law provides a right to postconviction advanced forensic testing—  
6 specifically, fingerprint testing—pursuant to Arizona Revised Statute § 13-4241  
7 and DNA testing pursuant to Arizona Revised Statute § 13-4240. (“A.R.S. § 13-  
8 4241 or A.R.S. § 13-4240” or “the statutes”). Plaintiff properly filed a motion for  
9 testing pursuant to the statutes, and made the requisite showing, which should have  
10 entitled him to the requested DNA and fingerprint testing. *See* Mot. For  
11 Postconviction DNA and Advanced Forensic Testing, *State v. Hooper*, No. CR-  
12 0000-121686 (Maricopa Cnty. Super. Ct. Sept. 22, 2022) (Exhibit A); Minute Entry  
13 Denying Mot. For Postconviction DNA and Advanced Forensic Testing, *State v.*  
14 *Hooper*, No. CR-0000-121686 (Maricopa Cnty. Super. Ct. Oct. 24, 2022) (Exhibit  
15 B); Petition for Special Action, *Hooper v. Hon. Jennifer Green*, No. CV-22-0259-  
16 SA (Ariz. Oct. 31, 2022) (Ex. C). However, he was ultimately denied all forensic  
17 testing. *See Hooper v. Hon. Jennifer Green*, No. CV-22-0259-SA (Ariz. Nov. 10,  
18 2022) (Exhibit D).

19 4. Accordingly, Plaintiff files this action to challenge the constitutionality of the  
20 statutes as applied by the State of Arizona. Given the unique ability of DNA and  
21 fingerprint evidence to identify the actual killers in this case, Defendants' continued  
22 refusal to allow Plaintiff to test key evidence in their possession denies him due  
23 process of law and access to the courts and violates his Eighth Amendment right to  
24 be free from cruel and unusual punishment. Plaintiff requests an order from this  
25 Court declaring that A.R.S. § 13-4241 and A.R.S. § 13-4240 as construed by the  
26 state courts in this case violate his constitutional rights. Plaintiff requests an order  
27 directing that the fingerprint evidence collected at the crime scene be run through  
28 local and national databases. Plaintiff further requests an order requiring

1 Defendants to release the DNA evidence to Plaintiff under a reasonable protocol  
2 regarding chain of custody and preservation of the evidence, so that Plaintiff can  
3 have the evidence tested at his own expense.

## 4 **II. Parties**

5 5. PLAINTIFF, Murray Hooper, is currently incarcerated on death row  
6 following his 1982 murder convictions in the Superior Court of Maricopa County,  
7 Arizona. He is in the custody of the Arizona Department of Corrections,  
8 Rehabilitation & Reentry and has an execution date scheduled on November 16,  
9 2022.

10 6. DEFENDANT, Mark Brnovich (“Attorney General”), is the Attorney  
11 General for the State of Arizona. The Arizona Attorney General’s Office is located  
12 at 2005 North Central Avenue, Phoenix, AZ 85004. As such, he is responsible for  
13 enforcing and defending the laws of Arizona, including the statutes at issue in this  
14 case. The Attorney General is sued in his official capacity for the purpose of  
15 obtaining declaratory and injunctive relief.

16 7. DEFENDANT, Jeri Williams, is the Police Chief for the city of Phoenix  
17 located at 620 West Washington Street, Phoenix, AZ, 85003. The Phoenix Police  
18 Department has possession, control, and/or access to numerous items of physical  
19 evidence collected during the investigation of the crime of which Plaintiff was  
20 convicted that likely contain biological material suitable for DNA testing or viable  
21 fingerprints suitable for testing, but which were either not tested previously or could  
22 now be tested with new technology that was not available at the time of Plaintiff’s  
23 trial. She is sued in her official capacity for the purpose of obtaining declaratory  
24 and injunctive relief.

## 25 **III. Jurisdiction and Venue**

26 8. This Court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§  
27 1331 and 1343 because this is an action to address the deprivation, under color of  
28 state law, of Plaintiff’s rights under the First, Eighth, and Fourteenth Amendments.

1 9. Venue lies within the District of Arizona under 28 U.S.C. § 1391(b)(1) and  
2 (2) because the Defendants reside in this District and a substantial part of the events  
3 giving rise to Plaintiff's claims occurred in this District.

#### 4 **IV Factual Background**

##### 5 **A. The Crime and Plaintiff's Conviction**

6 10. On December 31, 1980, William "Pat" Redmond and his mother-in-law,  
7 Helen Phelps, were shot and killed by three home invaders. *State v. Bracy*, 703 P.2d  
8 464, 469 (Ariz. 1985). Redmond's wife, Marilyn, was shot in the head but survived.  
9 *Id.*

10 11. The State rapidly focused on Plaintiff, William Bracy, and Edward McCall,  
11 relying on inherently suspicious and unreliable sources: four well-paid informants  
12 who received everything from sentencing immunity to money, drugs, and sex.  
13 Then, after Mrs. Redmond initially said she could not identify the perpetrators, she  
14 was flown to Chicago nearly two months later to identify Plaintiff and Bracy in a  
15 police station lineup. (Tr. 12/20/1982 at 65–70; Tr. 11/30/1982 p.m. at 58–61.)

16 12. Mrs. Redmond initially indicated she could not identify the intruders since  
17 she was too afraid to look at them. (Tr. 11/30/1982 p.m. at 73; Tr. 8/26/1982 at 141–  
18 42.) She described the perpetrators as three black men, some wearing masks. (Tr.  
19 11/8/1982 p.m. at 73; Tr. 11/3/1982 at 171, 180, 184, 221–22, 230–31, 237–38; Tr.  
20 8/27/1982 at 69–70.) Later, she stated that two Black men and one white man  
21 committed the crime. (Tr. 11/3/1982 at 221, 231, 248.) After Mrs. Redmond  
22 identified two of the suspects as wearing masks—proving she could not identify  
23 them—she described the suspects as clean-shaven. (Tr. 11/8/1982 p.m. at 74–75.)  
24 Still, Mrs. Redmond was unable to describe the assailants' facial features. (Tr.  
25 11/4/1982 at 50; Tr. 11/3/1982 at 221–22, 230.) And although Plaintiff had a  
26 distinct white patch in the front of his hair (Tr. 11/18/1982 at 51; Tr. 12/8/1982 a.m.  
27 at 94–95; Tr. 12/8/1982 p.m. 36–37), Mrs. Redmond never mentioned seeing this.  
28 Mrs. Redmond noted that one of the Black men wore a gold chain and another wore

1 a leather-like jacket. (Tr. 11/10/1982 at 86; Tr. 11/9/1982 at 239–40.) Inconsistent  
2 with her own initial account that two of the three assailants wore face-covering  
3 masks, Mrs. Redmond later somehow identified Plaintiff and William Bracy as two  
4 of the assailants. (Tr. 11/30/1982 p.m. at 58–63.)

5 13. Plaintiff and Bracy were indicted together on one count of conspiracy to  
6 commit first-degree murder, two counts of first-degree murder, one count of  
7 attempted first-degree murder, three counts of kidnaping, three counts of armed  
8 robbery, and one count of first-degree burglary. (ROA 1.)

9 14. At trial, the State theorized that a man named Robert Cruz wanted Pat  
10 Redmond killed because Redmond was blocking a lucrative deal involving Las  
11 Vegas casinos. (Tr. 11/2/1982 at 7–8.) The State claimed Cruz recruited Plaintiff,  
12 Bracy, and McCall to kill Pat Redmond.

13 15. The State's case relied heavily on informant Arnie Merrill, a Valium-  
14 dependent drug dealer, fence for stolen goods, and mastermind of burglaries. (Tr.  
15 11/29/1982 a.m. at 11; Tr. 11/24/1982 at 110–11; Tr. 11/16/1982 at 154; Tr.  
16 11/18/1982 at 21–22, 171.) Merrill agreed to testify only after being incentivized  
17 with a State-sponsored offer. In exchange for testimony, Merrill only had to plead  
18 guilty to one of his many burglaries and thefts, and was guaranteed immunity for  
19 all other crimes, including arson, armed robbery, burglaries, and ultimately the  
20 Redmond home invasion and murder. (Tr. 11/16/1982 at 152–55.) These forgiven  
21 crimes had the potential to leave Merrill in prison for life, or worse if his fingerprints  
22 or DNA had been found at the scene. Merrill testified that he knew about the plan  
23 to kill Pat Redmond, drove the killers to Redmond's house and business, and helped  
24 them procure weapons. (Tr. 11/17/1982 at 9–11, 15–16, 28–32, 44–51, 64–65, 72,  
25 106.) Despite admitted extensive involvement in the events resulting in the  
26 homicides, the State absolved Merrill of any responsibility. (Tr. 11/16/1982 at 152–  
27 54.) At the very least, by his own admissions, he was guilty of felony murder.  
28 Merrill's mostly uncorroborated account was the only source for much of the

1 evidence the State relied on to convict Plaintiff.

2 16. Informant George Campagnoni testified he was with Plaintiff and Bracy at  
3 Merrill's house on New Year's Eve. He also offered this testimony in exchange for  
4 a deal. (Tr. 11/29/1982 a.m. at 19; Tr. 11/24/1982 at 53–55, 83–84, 117–18.)  
5 Campagnoni formed a burglary ring with Merrill, McCall, and others and  
6 committed a spree of burglaries in October 1980. (Tr. 11/24/1982 at 54–55, 110–  
7 11.) Together, Campagnoni's crimes had the potential to leave him with  
8 consecutive sentences, and possibly life in prison, or worse if his fingerprints or  
9 DNA had been found at the scene. Instead, the State allowed Campagnoni to plead  
10 to one count of burglary and one count of theft. (Tr. 12/20/1982 at 172, 176; Tr.  
11 11/29/1982 a.m. at 19; Trial Exhibit 209.) Although Campagnoni possessed  
12 property stolen from the Redmonds—evidence of a more active participation than  
13 he let on (Tr. 11/24/1982 at 92–93; Tr. 11/16/1982 at 126–27)—he was given  
14 immunity (Tr. 11/29/1982 a.m. at 14–15).

15 17. Informant Nina Marie Louie was a prostitute and sold drugs. (Tr. 11/23/1982  
16 at 88–90, 105–07, 138–39.) Louie said she saw Plaintiff and Bracy at her apartment  
17 in Phoenix on New Year's Eve. (Tr. 11/23/1982 at 30.) The State compensated  
18 Louie for her testimony. (Tr. 12/20/1982 at 7–8; Tr. 11/23/1982 at 64–68.)

19 18. Plaintiff has always maintained his innocence and continues to do so today.  
20 His defense was that he was not in Arizona when the crime was committed.  
21 Multiple people saw Plaintiff in Chicago. Alibi witnesses supported Plaintiff's  
22 defense through testimony at trial.

23 19. On December 24, 1982, the jury convicted Bracy and Plaintiff on all counts.  
24 Subsequently, the court found five aggravating factors, three of which have since  
25 been voided, and imposed the death penalty. (Tr. 2/11/1983 at 29–34.)

26 20. Plaintiff exhausted his state and federal court remedies as detailed at *Hooper*  
27 *v. Shinn*, 985 F.3d 594, 610–14 (9th Cir. 2021).

28 21. On September 22, 2022, Plaintiff petitioned the Maricopa County Superior

1 Court for DNA and other advanced forensic testing. (Exhibit A.)

2 22. The Arizona Supreme Court issued a warrant for Plaintiff's execution on  
3 October 12, 2022. Plaintiff's execution is scheduled for November 16, 2022.

4 23. The Maricopa County Superior Court denied Plaintiff's request for DNA and  
5 advanced forensic testing by minute entry issued October 21, 2022. (Exhibit B.)

6 24. Plaintiff then filed a special action challenging that decision on October 31,  
7 2022. (Exhibit C.) The Arizona Supreme Court denied the special action on  
8 November 10, 2022. (Exhibit D.)

9 **B. DNA and Fingerprint Evidence Left by the Perpetrator Has Never**  
10 **Been Tested**

11 25. Law enforcement recovered numerous pieces of physical evidence from the  
12 crime scene, including (i) the bloodied knife used to cut Mr. Redmond's throat; (ii)  
13 fingerprints lifted from the spool of tape used by the perpetrators to bind the  
14 victims' hands; (iii) fingerprints lifted from the hall closet door handle where the  
15 perpetrators searched; (iv) fingerprints lifted from the coffee table where one of the  
16 perpetrators sat; and (v) fingerprints lifted from various other places in the house.

17 26. Because DNA testing did not exist at the time of Plaintiff's trial in 1982, no  
18 items were tested for DNA.

19 27. Because fingerprint comparison was in its infancy at the time of Plaintiff's  
20 1982 trial, the prints collected at the scene were only visually compared. It was not  
21 precise and was left to the discretion of the person comparing the prints. Latent  
22 prints were lifted at the scene and comparison prints were obtained under controlled  
23 conditions on a fingerprint card. (Tr. 11/15/1982 at 6–7.) The fingerprints were then  
24 enlarged and compared by eye. (Tr. 11/15/1982 at 6.)

25 28. Fingerprint technology has changed dramatically since Plaintiff's 1982 trial.  
26 One need only look at the changes in FBI fingerprint analysis. In July 1999, nearly  
27 two decades after Plaintiff's trial, the FBI published its online computerized  
28 Integrated Automated Fingerprint Identification System (IAFIS). *See Privacy*

1 Impact Assessment Integrated Automated Fingerprint Identification System  
2 National Security Enhancements, at [https://www.fbi.gov/how-we-can-help-](https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/freedom-of-informationprivacy-act/departments-of-justice-fbi-privacy-impact-assessments/firs-iafis)  
3 [you/need-an-fbi-service-or-more-information/freedom-of-informationprivacy-](https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/freedom-of-informationprivacy-act/departments-of-justice-fbi-privacy-impact-assessments/firs-iafis)  
4 [act/departments-of-justice-fbi-privacy-impact-assessments/firs-iafis](https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/freedom-of-informationprivacy-act/departments-of-justice-fbi-privacy-impact-assessments/firs-iafis) (last visited  
5 Nov. 8, 2022). This national system allowed for “storing, comparing, and  
6 exchanging fingerprint data in a digital format [which] permits comparisons of  
7 fingerprints in a faster and more accurate manner.” *Id.* More than a decade later  
8 (and nearly 30 years after Plaintiff’s trial) the FBI developed the Next Generation  
9 Identification (NGI) system. [https://le.fbi.gov/science-and-lab-](https://le.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/biometrics/next-generation-identification-ngi)  
10 [resources/biometrics-and-fingerprints/biometrics/next-generation-identification-](https://le.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/biometrics/next-generation-identification-ngi)  
11 [ngi](https://le.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/biometrics/next-generation-identification-ngi) (last visited on Nov. 7, 2022).

12 29. The NGI brought the FBI’s identification services “to the next level[,]”  
13 improving on “the efficiency and accuracy of biometric services[.]” *Id.* The NGI  
14 includes the Advanced Fingerprint Identification Technology (AFIT), which  
15 replaced IAFIS in February 2011. The AFIT increases both accuracy and capacity  
16 of the IAFIS’s fingerprinting capabilities as well as improving system availability.  
17 *Id.* A new algorithm for fingerprint-matching was introduced, improving accuracy  
18 from 92% to 99.6%. *Id.*

### 19 **C. Plaintiff’s Efforts to Obtain Post-Conviction DNA and Fingerprint** 20 **Testing**

21 30. On September 29, 2021, the Arizona legislature enacted A.R.S. § 13-4241 to  
22 create post-conviction relief procedures for newly available forensic testing. 2021  
23 Ariz. Legis. Serv. Ch. 157, § 1.

24 31. In 2000, the Arizona legislature enacted A.R.S. § 13-4240 to allow post-  
25 conviction DNA testing. 2000 Ariz. Legis. Serv. Ch. 373, § 1.

26 32. With the advent of DNA testing, more advanced fingerprint testing, and the  
27 passage of the statutes, Plaintiff attempted to establish his innocence through both  
28 fingerprint and DNA testing. As discussed above, in 2022, Plaintiff filed a petition



1 in the Superior Court of Maricopa County under A.R.S. § 13-4241 and A.R.S. § 13-  
2 4240 requesting both fingerprint and DNA testing of certain items of evidence,  
3 including the knife used in the commission of the crime and the tape spool from the  
4 tape used to bind the hands of the victims. (*See Exhibit A.*)

5 33. In his motion, Plaintiff identified several items of physical evidence secured  
6 during the investigation of the crime, the testing of which would demonstrate his  
7 innocence. These items fell into two main categories: (i) items known through  
8 eyewitness testimony to have been touched by one or more of the three attackers;  
9 and (ii) fingerprints collected in areas of the home where the three attackers were  
10 thought to have touched. For each item of evidence, Plaintiff explained both how  
11 the evidence was suitable for robust modern DNA and fingerprint testing and why  
12 each item was highly probative to the identity of the true perpetrator of the crime  
13 for which Plaintiff was sentenced to death. Specifically, Plaintiff described how the  
14 State relied heavily on paid informants, committed multiple acts of prosecutorial  
15 misconduct, and the only eyewitness gave several different descriptions of the  
16 attackers that ranged from not looking at them at all to them all wearing masks to  
17 none of them wearing masks.

18 34. Testing of this evidence could identify the true attackers and had this testing  
19 been available at the time of the trial, forensic evidence placing one of the State's  
20 paid informants or the identified alternative suspects in the Redmond home would  
21 have been exculpatory.

22 35. Plaintiff demonstrated in his motion that the testing he sought is scientifically  
23 sound and that the evidence on which he sought such testing was in the possession  
24 of the State of Arizona.

25 36. Plaintiff identified several ways that DNA and fingerprint test results could  
26 raise a reasonable probability that he was not the assailant and thus entitle him to  
27 both fingerprint and DNA testing under the statutes.

28 37. First, Plaintiff explained that if DNA or fingerprint test results on the knife,

1 tape spool, closet door, or coffee table matched a known alternative perpetrator,  
2 such as Arnie Merrill, George Campagnoni, Ronald Bradford, Michael Bradford,  
3 Novel Ward, or another viable CODIS or AFIT hit, the results would raise a  
4 reasonable probability that Plaintiff was not responsible for the murders of Mr.  
5 Redmond and Mrs. Phelps as is required under A.R.S. § 13-4241(B)(1)–(4).

6 38. Second, Plaintiff explained that if DNA and fingerprint test results on  
7 multiple items of evidence all pointed to an alternative perpetrator(s), the State’s  
8 theory would fall apart, and this would raise a reasonable probability that Plaintiff  
9 would not have been prosecuted or convicted. *See* A.R.S. § 13-4241(B)(1)–(4).

10 39. Finally, Plaintiff explained that a DNA profile obtained from newly tested  
11 evidence could be run through the federal CODIS database. Similarly, the  
12 fingerprints that were already lifted from the scene could be run through local  
13 databases and the national AFIT database. If the evidence “hit,” pointing to an  
14 individual in the CODIS or AFIT databases, such information would further support  
15 Plaintiff’s claim of innocence.

16 40. The superior court denied Plaintiff’s motion for testing. (*See* Exhibit B.) On  
17 appeal, the Arizona Supreme Court denied the request for a testing. (*See* Exhibit C.)  
18 However, he was ultimately denied. (*See* Exhibit D.)

19 41. Having satisfied the materiality requirements of A.R.S. § 13-4241 and A.R.S.  
20 § 13-4240, Plaintiff’s motion for DNA and fingerprint testing should have been  
21 granted.

## 22 **V. Claims for Relief**

### 23 **COUNT I: DENIAL OF DUE PROCESS**

24 42. Plaintiff incorporates by reference paragraphs 1 through 41 of this Complaint  
25 as set forth fully herein.

26 43. Arizona Revised Statute § 13-4241 provides that a person who was sentenced  
27 for a felony offense, who meets the requirements of the statute, may request “[a]t  
28 any time” that evidence that is in the possession or control of the State, related to

1 the investigation or prosecution of the case, be either forensically tested with a  
2 technique that was not available at the time of trial and that is widely accepted in  
3 the scientific community via technological advances, A.R.S. § 13-4241(A)(1), or  
4 “[u]ploaded to searchable local, state or national databases that are subject to the  
5 standards imposed by the agency that is responsible for managing the  
6 database[,]”A.R.S. § 13-4241(A)(2).

7 44. The Court “shall” order the new testing after providing notice to the  
8 prosecutor and opportunity for a response, if the Court finds that all the following  
9 apply:

- 10 1. A reasonable probability exists that the petitioner would  
11 not have been prosecuted or convicted if exculpatory  
12 results had been obtained through the new forensic  
13 testing.
- 14 2. The evidence is still in existence and is in a condition that  
15 allows the new forensic testing to be conducted.
- 16 3. The evidence was not previously subjected to . . . the  
17 analysis or comparison that is now requested.
- 18 4. The new forensic testing may resolve an issue that was  
19 not previously resolved by any other testing. (13-  
20 4241(B)(1)–(4).)

21 45. Under A.R.S. § 13-4240(A), a person who was sentenced for a felony  
22 offense, and who meets the requirements of the statute, may request “[a]t any time”  
23 DNA testing of “any evidence that is in the possession or control of the court or the  
24 state, that is related to the investigation or prosecution [of the case], and that may  
25 contain biological evidence.”

26 46. The Court “shall order [DNA] testing” after providing the prosecutor with  
27 notice and opportunity to respond to the defendant’s request if the Court determines  
28 these provisions apply: a reasonable probability exists that the petitioner would not

1 have been prosecuted or convicted if DNA testing had produced exculpatory  
2 results; the evidence is still in existence, in a condition that allows DNA testing to  
3 be conducted; and the evidence was not subjected to the testing now requested, and  
4 that may resolve an issue not resolved by the previous testing. A.R.S. § 13-  
5 4240(B)(1)–(3).

6 47. When a state law creates a liberty interest, such as the statutes above, the  
7 state’s procedures must comport with procedural due process. Likewise, when a  
8 state creates a judicial remedy, access to that remedy must be fairly afforded.

9 48. Plaintiff has a constitutionally protected liberty interest in access to post-  
10 conviction relief, and he was denied due process in seeking access to such post-  
11 conviction relief. *See Skinner v. Switzer*, 562 U.S. 521 (2011). Because the  
12 procedures for obtaining DNA and fingerprint testing can be essential to realizing  
13 the right to post-conviction relief, those procedures must not offend fundamental  
14 principles of justice or “transgress[] any recognize[d] principle of fundamental  
15 fairness in operation.” *Medina v. California*, 505 U.S. 437, 448 (1992) (internal  
16 citations and quotation omitted).

17 49. Plaintiff has availed himself of the state court procedures available to him to  
18 seek access to the physical evidence in Defendants’ possession or control so that he  
19 may conduct post-conviction DNA and fingerprint testing to prove his actual  
20 innocence of the murders.

21 50. Here, Plaintiff was denied access to DNA and fingerprint testing of evidence  
22 due to the unreasonably restrictive and unconstitutional interpretations of the  
23 statutes by Arizona courts, rendering A.R.S. § 13-4240 and A.R.S. § 13-4241  
24 essentially unavailable, in violation of his procedural due process rights.

25 51. First, the Arizona courts construed the statutes to impose an unconstitutional  
26 barrier to Plaintiff’s access to post-conviction remedies by way of DNA and  
27 fingerprint testing by reading into the statutes a near impossible requirement—that  
28 Plaintiff must prove his innocence as a precondition of obtaining DNA and

1 fingerprint testing, when DNA and fingerprint testing are the only means in some  
2 cases, like Plaintiff's, to exonerate the wrongly convicted.

3 52. Contrary to the state court's construction in the present case, the statutes do  
4 not require that petitioners establish that the DNA and fingerprint test results would  
5 "show actual innocence" or that petitioners exonerate themselves as an initial matter  
6 before they are permitted to receive testing. Under A.R.S. § 13-4240(B)(1), the  
7 Plaintiff must only show a "reasonable probability exists that the petitioner would  
8 not have been prosecuted or convicted if exculpatory results had been obtained  
9 through deoxyribonucleic acid testing." Under A.R.S. § 13-4240(C)(1)(a), "the  
10 petitioner's verdict or sentence would have been more favorable if the results of  
11 deoxyribonucleic acid testing had been available at the trial leading to the judgment  
12 of conviction." And lastly, under A.R.S. § 13-4241(B)(1)-(4), Plaintiff must show  
13 "[a] reasonable probability exists that the petitioner would not have been prosecuted  
14 or convicted if exculpatory results had been obtained through the new forensic  
15 testing."

16 53. In the instant case, Plaintiff identified a theory of innocence: that he did not  
17 kill Mr. Redmond or Mrs. Phelps, that he was not present in Phoenix, that he was  
18 mistakenly identified, and that he was framed by invested informants. Here, DNA  
19 and fingerprint testing have the potential to develop the profile of the actual  
20 perpetrator who has no explanation for the presence of their DNA or fingerprints  
21 comingled with evidence recovered from the crime scene. The presence of such a  
22 suspect's DNA or fingerprints would strongly support Plaintiff's theory of  
23 innocence and show a "reasonable probability" that he did not commit this murder.

24 54. Assuming as it must under the status the Arizona court acknowledged here  
25 that the results of the forensic testing would be inconsistent with the state theory.  
26 Despite that, the courts denied the testing, finding that even if the testing results  
27 pointed to the informants, it would not undermine the overwhelming evidence of  
28 Plaintiff's guilt. But that overwhelming evidence itself was the testimony of these

1 paid informants. To simply, the overwhelming evidence upon which they relied to  
2 deny the testing is exactly the evidence which the testing would undermine.

3 55. The purpose of A.R.S. § 13-4240 and A.R.S. § 13-4241 is thwarted by  
4 precluding access to DNA and fingerprint testing and blocking constitutionally  
5 required access to other related post-conviction relief. Many convicted persons, like  
6 Plaintiff, who have articulated a theory of innocence and demonstrated a reasonable  
7 probability that DNA and fingerprint testing could prove their innocence—all the  
8 statutes require—cannot do more to cast doubt on the evidence used to convict  
9 them, or prove their innocence, without such testing. Such prisoners, therefore,  
10 cannot meet the nearly impossible burden imposed on them by the Arizona courts.  
11 This burden is fundamentally unfair and violates Plaintiff’s right to due process of  
12 law.

13 56. The superior court found the trial evidence so “overwhelming” that new  
14 forensic evidence would make no difference. (Exhibit B at 5–6.) The evidence was  
15 not overwhelming to the jury. It deliberated over the course of three days before  
16 reaching a verdict. The standard applied by the superior court was severely flawed.  
17 Even if the evidence at Plaintiff’s trial was overwhelming, that is not the test. The  
18 point of these proceedings is that if the jury had exculpatory results of forensic  
19 testing, the evidence would no longer have been “overwhelming”; the case either  
20 would never have been charged or if charged, there is a reasonable probability  
21 Plaintiff would not have been convicted.

22 57. Furthermore, by construing the statutes to contain such a requirement,  
23 Defendants and the Arizona courts also deprived Plaintiff of his protected liberty  
24 interest in obtaining post-conviction remedies, which is to be afforded under  
25 Arizona law to those who can present such exculpatory evidence. Because these  
26 statutes provide a state-centered right to fingerprint and DNA testing, that right  
27 “beget[s] yet other rights to procedures essential to the realization of the parent  
28 right.” *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 463 (1981). Plaintiff can

1 only unlock certain post-conviction remedies under these statutes, such as vacation  
2 of the sentence, resentencing, or a new trial, if they are first granted access to  
3 fingerprint and DNA testing.

4 58. Moreover, Defendants and Arizona courts' interpretation of these statutes  
5 "offends [a] principle of justice so rooted in the traditions and conscience of our  
6 people as to be ranked as fundamental." *Medina v. California*, 505 U.S. 437, 445  
7 (1992) (citations and quotation marks omitted). The execution of an innocent person  
8 in a case where fingerprint evidence and DNA evidence suitable for testing was  
9 available, but unused, is a fundamental miscarriage of justice that offends our most  
10 basic notions of fairness and decency. Thus, Plaintiff's right to procedural due  
11 process—to a fair and meaningful opportunity to demonstrate his innocence  
12 through DNA and fingerprint testing—has been violated for this reason as well.

13 59. Accordingly, the unreasonable interpretation of these statutes, as  
14 authoritatively construed by Defendants and Arizona courts, deprives Plaintiff of  
15 his procedural due process right to vindicate a state-created liberty interest in post-  
16 conviction relief, in violation of the Due Process Clause of the Fourteenth  
17 Amendment, and offends fundamental principles of justice, and deprives Plaintiff  
18 of his due process rights.

19 **COUNT II: DENIAL OF RIGHT TO MEANINGFUL ACCESS TO**  
20 **COURTS**

21 60. Plaintiff incorporates by reference paragraphs 1 through 59 of this Complaint  
22 as set forth fully herein.

23 61. Arizona has provided a post-conviction process for convicted persons to seek  
24 access to fingerprint and DNA testing of physical evidence collected in their case  
25 to demonstrate their innocence through these statutes.

26 62. Here, if Plaintiff could access and test the physical evidence in Defendants'  
27 possession or control, he could raise a post-conviction claim under these statutes,  
28 seeking remedies such as a new trial, resentencing, or vacatur of his sentence, if the

1 results of testing are exculpatory.

2 63. These statutes, as authoritatively construed by Arizona courts, imposes an  
3 unreasonable barrier to court access not contemplated by the legislature by reading  
4 into these statutes an impossible hurdle to obtaining fingerprint and DNA testing  
5 results. It therefore arbitrarily and unconstitutionally deprives Plaintiff of  
6 meaningful access to post-conviction procedures provided by Arizona law to  
7 establish that he is innocent of the crime for which he was convicted and sentenced,  
8 in violation of the Petition Clause of the First Amendment to the United States  
9 Constitution.

### 10 **COUNT III: CRUEL AND UNUSUAL PUNISHMENT**

11 64. Plaintiff incorporates by reference paragraphs 1 through 63 of this Complaint  
12 as set forth fully herein.

13 65. Plaintiff challenges Arizona's post-conviction fingerprint and DNA statutes  
14 as construed by Defendants and the Arizona courts to foreclose access to fingerprint  
15 and DNA testing as a violation of his right to be free from cruel and unusual  
16 punishment under the Eighth Amendment of the United States Constitution.

17 66. When a defendant's life is at stake, a court must be "particularly sensitive to  
18 insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187  
19 (1976). The penalty of death is qualitatively and profoundly different from any  
20 other sentence. *E.g.*, *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) ("In capital  
21 proceedings generally, this Court has demanded that factfinding procedures aspire  
22 to a heightened standard of reliability. This especial concern is a natural  
23 consequence of the knowledge that execution is the most irremediable and  
24 unfathomable of penalties; that death is different." (internal citations omitted)).  
25 Thus, our system of justice must go "to extraordinary measures to ensure that the  
26 prisoner sentenced to be executed is afforded process that will guarantee, as much  
27 as is humanly possible, that the sentence was not imposed out of whim, passion,  
28 prejudice, or mistake." *Eddings v. Oklahoma*, 455 U.S. 104, 118 (1982) (O'Connor,



1 J. concurring). Arizona's construction of these statutes to deny Plaintiff basic  
2 procedural rights to access fingerprint and DNA testing to demonstrate his  
3 innocence before he is executed violates the Eighth Amendment for these reasons  
4 as well.

5 **COUNT IV: DENIAL OF OPPORTUNITY TO PROVE ACTUAL**  
6 **INNOCENCE**

7 67. Plaintiff incorporates by reference paragraphs 1 through 66 of this Complaint  
8 as set forth fully herein.

9 68. By refusing to release the physical evidence for fingerprint and DNA  
10 analysis, and thereby preventing Plaintiff from gaining access to evidence that could  
11 exonerate him, Defendants have denied Plaintiff the opportunity to make a  
12 conclusive showing that he is actually innocent of the crime for which he is  
13 currently incarcerated and sentenced to die, in violation of the Due Process Clause  
14 of the Fourteenth Amendment.

15 69. The State of Arizona will suffer no prejudice by allowing Plaintiff to access  
16 the evidence for purposes of fingerprint and DNA testing. Any cost related to the  
17 fingerprint and DNA testing would be paid for by Plaintiff's counsel.

18 **PRAYER FOR RELIEF**  
19

20 WHEREFORE, Plaintiff Murray Hooper requests relief as follows:

21 A. A declaratory judgment that A.R.S. § 13-4240 and A.R.S. § 13-4241, as  
22 applied violate Plaintiff's rights under the First, Eighth, and Fourteenth  
23 Amendments;

24 B. A preliminary and permanent injunction requiring Defendants to take all  
25 reasonably necessary steps to preserve, produce, and release all physical evidence  
26 for fingerprint and DNA testing by a fully accredited DNA laboratory and  
27 fingerprint testing facility, pursuant to a mutually agreed upon protocol regarding  
28 chain of custody, preservation, and return of such evidence after testing has been

1 completed;

2 C. Declaratory and injunctive relief that Plaintiff is entitled to access to evidence  
3 for fingerprint and DNA testing, which is binding upon those persons in active  
4 concert or participation with them, under Federal Rules of Civil Procedure 65(d);

5 D. Ordering such other and further relief as the Court deems just and proper.

6 Respectfully submitted this 10th day of November, 2022.

7  
8 Jon M. Sands  
9 Federal Public Defender  
District of Arizona

10 Kelly L. Culshaw  
11 Nicole List  
12 Nathan A. Maxwell

13 s/Kelly L. Culshaw  
14 Counsel for Petitioner  
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